

## Wage and Hour Division, Labor

## § 784.21

§§ 784.12 to 784.15 for definitions governing the scope of this coverage). In general, employees of businesses concerned with fisheries and with operations on seafood and other aquatic products are engaged in interstate or foreign commerce, or in the production of goods for such commerce, as defined in the Act, and are subject to the Act's provisions except as otherwise provided in sections 13(a)(5) and 13(b)(4) or other express exemptions. A detailed discussion of the activities in commerce or in the production of goods for commerce which will bring an employee under the Act is contained in part 776 of this chapter, dealing with general coverage.

### **§ 784.19 Commerce activities of enterprise in which employee is employed.**

Under amendments to the Fair Labor Standards Act employees not covered by reason of their personal engagement in interstate commerce activities, as explained in § 784.18, are nevertheless brought within the coverage of the Act if they are employed in an enterprise which is defined in section 3(s) of the Act as an enterprise engaged in commerce or in the production of goods for commerce. Such employees, if not exempt from minimum wages and overtime pay under section 13(a)(5) or exempt from overtime pay under section 13(b)(4), will have to be paid in accordance with the monetary standards of the Act unless expressly exempt under some other provision. This would generally be true of employees employed in enterprises and by establishments engaged in the procurement, processing, marketing, or distribution of seafood and other aquatic products, where the enterprise has an annual gross sales volume of not less than \$250,000. Enterprise coverage is more fully discussed in part 776 of this chapter, dealing with general coverage.

### **§ 784.20 Exemptions from the Act's provisions.**

The Act provides a number of specific exemptions from the general requirements previously described. Some are exemptions from the overtime provisions only. Several are exemptions from both the minimum wage and the overtime requirements of the Act. Fi-

nally, there are some exemptions from all three—minimum wage, overtime pay, and child labor requirements. An examination of the terminology in which the exemptions from the general coverage of the Fair Labor Standards Act are stated discloses language patterns which reflect congressional intent. Thus, Congress specified in varying degree the criteria for application of each of the exemptions and in a number of instances differentiated as to whether employees are to be exempt because they are employed by a particular kind of employer, employed in a particular type of establishment, employed in a particular industry, employed in a particular capacity or occupation or engaged in a specified operation. (See 29 U.S.C. 203(d); 207 (b), (c), (i); 213 (a), (b), (c), (d). And see *Addison v. Holly Hill*, 322 U.S. 607; *Mitchell v. Trade Winds, Inc.*, 289 F. 2d 278; *Mitchell v. Stinson*, 217 F. 2d (210). In general there are no exemptions from the child labor requirements that apply in enterprises or establishments engaged in fishing or in operations on aquatic products (see part 570, subpart G, of this chapter). Such enterprises or establishments will, however, be concerned with the exemption from overtime pay in section 13(b)(4) of the Act for employees employed in specified "on-shore" operations (see § 784.101), and the exemption from minimum wages and overtime pay provided by section 13(a)(5) for employees employed in fishing, fish-farming, and other specified "off-shore" operations on aquatic products. These exemptions, which are subject to the general rules stated in § 784.21, are discussed at length in subpart B of this part 784.

### **§ 784.21 Guiding principles for applying coverage and exemption provisions.**

It is clear that Congress intended the Fair Labor Standards Act to be broad in its scope. "Breadth of coverage is vital to its mission" (*Powell v. U.S. Cartridge Co.*, 339 U.S. 497). An employer who claims an exemption under the Act has the burden of showing that it applies (*Walling v. General Industries Co.*, 330 U.S. 545; *Mitchell v. Kentucky Finance Co.*, 359 U.S. 290; *Tobin v. Blue Channel Corp.*, 198 F. 2d 245, approved in

*Mitchell v. Myrtle Grove Packing Co.*, 350 U.S. 891; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52). Conditions specified in the language of the Act are “explicit prerequisites to exemption” (*Arnold v. Kanowsky*, 361 U.S. 388). In their application, the purpose of the exemption as shown in its legislative history as well as its language should be given effect. However, “the details with which the exemptions in this Act have been made preclude their enlargement by implication” and “no matter how broad the exemption, it is meant to apply only to” the specified activities (*Addison v. Holly Hill*, 322 U.S. 607; *Maneja v. Waialua*, 349 U.S. 254). Exemptions provided in the Act “are to be narrowly construed against the employer seeking to assert them” and their application limited to those who come “plainly and unmistakably within their terms and spirit.” This construction of the exemptions is necessary to carry out the broad objectives for which the Act was passed (*Phillips v. Walling*, 324 U.S. 490; *Mitchell v. Kentucky Finance Co.*, *supra*; *Arnold v. Kanowsky*, *supra*; *Calaf v. Gonzales*, 127 F. 2d 934; *Bowie v. Gonzales*, 117 F. 2d 11; *Mitchell v. Stinson*, 217 F. 2d 210; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52).

## Subpart B—Exemptions Provisions Relating to Fishing and Aquatic Products

### THE STATUTORY PROVISIONS

#### § 784.100 The section 13(a)(5) exemption.

Section 13(a)(5) grants an exemption from both the minimum wage and the overtime requirements of the Act and applies to “any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning, or packing of such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee.”

#### § 784.101 The section 13(b)(4) exemption.

Section 13(b)(4) grants an exemption only from the overtime requirements of the Act and applies to “any employee employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof.”

### LEGISLATIVE HISTORY OF EXEMPTIONS

#### § 784.102 General legislative history.

(a) As originally enacted in 1938, the Fair Labor Standards Act provided an exemption from both the minimum wage requirements of section 6 and the overtime pay requirements of section 7 which was made applicable to “any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or by products thereof” (52 Stat. 1060, sec. 13(a)(5)).

(b) In 1949 the minimum wage was extended to employees employed in canning such products by deleting the word “canning” from the above exemption, adding the parenthetical phrase “(other than canning)” after the word “processing” therein, and providing a new exemption in section 13(b)(4), from overtime pay provisions only, applicable to “any employee employed in the canning of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof”. All other employees included in the original minimum wage and overtime exemption remained within it (63 Stat. 910).

(c) By the Fair Labor Standards Amendments of 1961, both these exemptions were further revised to read as set forth in §§ 784.100 and 784.101. The effect of this change was to provide a means of equalizing the application of